

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Nicholas G. Ciriello, as Trustee of the Tara Glynn  
Colburn Trust,

Plaintiff,

v.

Amerindo Investment Advisors Inc.,

Defendant.

Index No. 604021/03

STIPULATION OF  
SETTLEMENT

It is hereby stipulated and agreed by the undersigned counsel for all the parties herein that the entire above-captioned action is resolved on the terms set forth in the Settlement Agreement annexed hereto as Exhibit 1, dated September 14, 2004.

The parties further agree that the action should be designated as "settled" and no further proceedings shall take place; provided, however, that this Court shall retain jurisdiction over this action for purposes of enforcing the Settlement Agreement, and that if the Amerindo Parties default thereunder, Plaintiff retains the right to have the action restored to the calendar for the purpose of pursuing the action and seeking any and all relief available, whether legal or equitable.

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**FILED**

SEP 22 2004

CLERK OF COURT  
GOVERNMENT OFFICE

**GOVERNMENT  
EXHIBIT**

**1168**

05 Cr. 621 (RJS)

(ID)

It is further stipulated and agreed that facsimile signatures on this stipulation shall be binding on the signator.

Dated: New York, New York  
September 20, 2004.

HELLER EHRMAN WHITE &  
McAULIFFE LLP

By *Kevin J. Toner*  
Kevin J. Toner

120 West 45th Street  
New York, NY 10036-4041  
(212) 832-8300  
(212) 763-7600 (Fax)

Attorneys for Defendant Amerindo  
Investment Advisors Inc.

Dated: New York, New York  
September 20, 2004

QUINN EMANUEL URQUHART  
OLIVER & HEDGES, LLP

By *Jeffrey A. Conciatori*  
Jeffrey A. Conciatori

335 Madison Avenue  
New York, New York 10017  
(212) 702-8100  
(212) 702-8200 (Fax)

Attorneys for Plaintiff Nicholas G.  
Ciriello, as Trustee of the Tara Glynn  
Colburn Trust

So Ordered:

*Am. Cl.*

09-21-04  
Date

**FILED**

SEP 22 2004

NEW YORK  
COUNTY CLERK'S OFFICE

DATE 7/1/08  
I hereby certify that the foregoing  
paper is a true copy of the original  
thereof, filed in my office on the  
day of 9/22/04

*Thomas J. Peltus*

County clerk and clerk of the  
Supreme Court of New York County  
NO PRE - OFFICIAL USE

**EXHIBIT 1**

**FILED**

**[SEP 22 2004]**

**NEW YORK  
COUNTY CLERK'S OFFICE**

Mutual Settlement Agreement  
Page 1 of 14

## MUTUAL SETTLEMENT AGREEMENT

This Mutual Settlement Agreement (the "Agreement") is entered into by and between Nicholas G. Ciriello ("Ciriello"), as Trustee of the Tara Glynn Colburn Trust (the "Trust"), an individual residing Los Angeles, California, Amerindo Investment Advisors Inc. ("Amerindo-California"), a corporation organized and existing under the laws of the State of California, with its principal place of business located in New York, New York (collectively, the "Litigation Parties"), and Amerindo Investment Advisors, Inc., a corporation organized and existing under the laws of Panama, with its principal place of business located in Panama ("Amerindo-Panama") (collectively, the "Settling Parties").

WHEREAS, Ciriello has commenced an action against Amerindo-California in the Supreme Court of the State of New York, County of New York, entitled "Nicholas G. Ciriello, as Trustee of The Tara Glynn Colburn Trust, Plaintiff, against Amerindo Investment Advisors Inc., Defendant," bearing Index No. 604021/03 (the "Action") wherein he claims that Amerindo-California owes a debt to the Trust, due as of February 10, 2003, in the amount of \$1,271,240.25 (the "Debt");

WHEREAS, Amerindo-California denies that it owes the Debt to the Trust, and asserts that any debt owing to the Trust is owed by Amerindo-Panama; and

WHEREAS, Ciriello has indicated an intention to bring an action against Amerindo-Panama to collect the Debt; and

WHEREAS, Amerindo-Panama denies that it owes the Debt to the Trust; and

WHEREAS, the Settling Parties wish to avoid the expense and inconvenience of litigation and to settle the claim in the Action, as well as all other potential claims arising out of the same nucleus of facts, including but not limited to the claim Ciriello has indicated an intent to bring against Amerindo-Panama, upon the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the terms of this Agreement, and upon the exchange of other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Settling Parties agree as follows:

1. The Litigation Parties shall cause their attorneys to promptly execute and file with the Clerk of the Supreme Court of the State of New York, County of New York, a Stipulation to Stay the Action, or such other functionally equivalent document (the "Stay"), pending full compliance with the terms of this Agreement.

2. Upon the execution of this Agreement, the Amerindo Parties, including their respective predecessors, successors and assigns, fully, absolutely, and unconditionally release and for all purposes forever discharge The Trust and its trustees, including without limitation Ciriello and Olga Chernov, from all causes of action, debts, contracts, agreements, promises, damages, claims and demands whatsoever, in law, admiralty or equity, arising out of or relating

03/20/2004

12:40

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Mutual Settlement Agreement  
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to the prior course of dealing between the Litigation Parties, including, but not limited to, the circumstances described above regarding the Debt.

3. The Stay shall not in any way prejudice Ciriello's right to move the Court to lift the Stay upon the failure of Amerindo-California and/or Amerindo-Panama (the "Amerindo Parties") to comply with any of the terms of this Agreement, for the purpose of pursuing the Action and seeking any and all relief available, whether legal or equitable.

4. The Settling Parties hereby agree that timely payment is a material term hereof, going to the essence of this Agreement.

5. The Amerindo Parties shall be in Default of this Agreement if the following two conditions are met:

A. The Amerindo Parties fail to timely make any of the payments called for in Paragraphs 10-12 hereof; and

B. Thereafter, the Amerindo Parties fail to remedy said failure of payment within ten (10) business days after Ciriello mails or causes to be mailed, by certified U.S. Mail, written notice of said failure, in a form substantially similar to that attached as Exhibit 1 hereto, to the following United States address:

Alberto Vilar  
399 Park Avenue  
Suite 1800  
New York, NY 10022

6. Amerindo-California shall not oppose or otherwise challenge any motion to lift the Stay on any grounds other than the Amerindo Parties' lack of Default under the terms of this Agreement.

7. Within 20 days after the Amerindo Parties have fully complied with their obligations hereunder, the Litigation Parties shall cause their attorneys to execute and file with the Court a Stipulation of Discontinuance With Prejudice of the Action.

8. In the event of Default, the Amerindo Parties hereby agree to submit to a general lien against all their property, real and personal, wherever it may be located, including without limitation outside the United States. For purposes of implementation and enforcement of this Paragraph 8, this Agreement shall constitute a security agreement in addition to a settlement agreement, and shall serve as a sufficient basis for the filing of a UCC Financing Statement (Form UCC1). For purposes of this Paragraph 8 only, the "Amerindo Parties" includes the Amerindo Parties and all subsidiaries, successors, and assigns thereof.

9. The obligations and debts arising hereunder shall be denominated senior debt of the Amerindo Parties, and no future debt incurred by the Amerindo Parties shall be more senior to the obligations and debts arising hereunder. Upon any violation of this provision by either or both Amerindo Parties, the payments required under Paragraphs 10-12 of this Agreement shall be accelerated and shall become due and payable immediately, regardless of whether or when the Trust became aware of such violation.



Mutual Settlement Agreement  
Page 3 of 14

10. The Amerindo Parties shall wire or cause to be wired \$100,000, no later than September 24, 2004, as follows:

MELLON BANK  
PITTSBURGH, PA  
ABA# 0430-0026-1

CREDIT MERRILL LYNCH  
A/C# 101-1730

FOR FURTHER CREDIT TO:

A/C# 230-04010 -- THE TARA COLBURN FUND

11. The Amerindo Parties shall wire or cause to be wired, as described in Paragraph 10 of this Agreement, \$450,000.00, over and above the previously-mentioned \$100,000, no later than December 31, 2004.

12. Amerindo Parties shall wire or cause to be wired, as described in Paragraph 10 of this Agreement, \$936,371.78, over and above the previously-mentioned \$100,000 and \$450,000, no later than August 15, 2005, which, along with the payments described in Paragraphs 10 and 11 of this Agreement, represents the compromised amount of the Debt together with interest that has accumulated to the date of this Agreement and that will continue to accumulate until the Debt has been fully satisfied.

13. The Amerindo Parties are jointly and severally liable for the payments called for in Paragraphs 10-12 of this Agreement.

14. Amerindo-California and Amerindo-Panama agree to sign, after the signing of this Settlement Agreement, respective confessions of judgment identical or substantially similar to those attached hereto as Exhibits 2 and 3. The execution of both confessions of judgment is a material term of this Agreement. The failure of either or both of the Amerindo Parties to so execute a confession of judgment shall not, however, affect the obligations of the Amerindo Parties described in Paragraphs 10-12 hereof, but shall give Ciriello the sole right to void this Agreement.

15. This Agreement, and all disputes arising hereunder, or relating thereto, shall be interpreted, construed and governed exclusively by New York law. In the event that this provision is held unenforceable, the Settling Parties hereby agree that said unenforceability of this provision shall not affect the enforceability of any other provision of this agreement.

16. Any and all disputes arising from or relating to this Agreement shall be adjudicated, exclusively, in a state or federal court located in New York County, New York, regardless of the choice of law principles of this or any other jurisdiction. In the event that this provision is held unenforceable, the Settling Parties hereby agree that said unenforceability of this provision shall not affect the enforceability of any other provision of this agreement.

Mutual Settlement Agreement  
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17. The Amerindo Parties hereby admit and submit to the jurisdiction of both the United States Courts and the Courts of the State of New York for purposes of all disputes arising out of or relating in any way to this Agreement.


18. No amendment or waiver of any provision of this Agreement, or consent by the Trust to any departure by the Amerindo Parties therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trust.

19. This Agreement may not be changed orally and shall bind and inure to the benefit of the heirs, administrators, successors and assigns of the Amerindo Parties and of the Trust, respectively.

20. The Amerindo Parties agree that they shall reimburse the Trust for any legal expenses, including but not limited to reasonable attorney fees, incurred in connection with any successful legal action brought by the Trust for the purpose of enforcing this Agreement, including but not limited to the filing of any confession of judgment, and including but not limited to the execution of any judgment entered in connection with this Agreement or any confession of judgment.

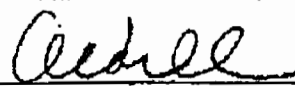
21. This Agreement may be signed in counterparts, and facsimile or similar true and correct copies of signed originals shall have the same effect as signed originals.

IN WITNESS WHEREOF, this Mutual Settlement Agreement is entered into as of the last date signed below.

  
\_\_\_\_\_  
Nicholas G. Ciricillo, as Trustee of  
The Tara Glynn Colburn Trust

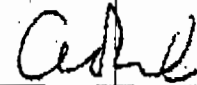
STATE OF New York  
COUNTY OF New York  
DATE 9-14-04

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\_\_\_\_\_  
Alberto Vilar, on behalf of Amerindo  
Investment Advisors Inc.

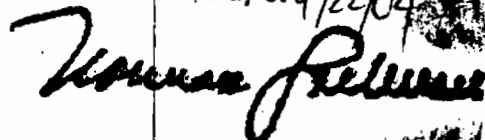
STATE OF New York  
COUNTY OF New York  
DATE September 13, 2004

**FILED**  
9/22/04  
**COUNTY CLERK**  
**NEW YORK COUNTY**  
**AS AN EXHIBIT**

  
\_\_\_\_\_  
Alberto Vilar, on behalf of Amerindo  
Investment Advisors, Inc.

STATE OF New York  
COUNTY OF New York  
DATE September 13, 2004

DATE 7/1/08  
I hereby certify that the foregoing  
paper is a true copy of the original  
thereof filed in my office on the  
day of 9/22/04

  
\_\_\_\_\_  
County clerk and clerk of the  
Supreme Court of New York County  
NO FOR OFFICIAL USE  
AS AN EXHIBIT

Mutual Settlement Agreement  
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EXHIBIT 1



Mutual Settlement Agreement  
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NOTICE OF NON-PAYMENT

\_\_\_\_\_, 200

Via Certified U.S. Mail

Alberto Vilar  
399 Park Avenue  
Suite 1800  
New York, NY 10022

Re: *Nicholas G. Ciriello, as Trustee of the  
Tara Glynn Colburn Trust v. Amerindo Investment Advisors Inc.*

Dear Mr. Vilar:

This letter is to inform you that the Amerindo Parties have failed to make or cause to be made the following payment, as required under the Mutual Settlement Agreement entered into on \_\_\_\_\_, 2004 in connection with the above-referenced action:

Mutual Settlement Agreement Paragraph No.: \_\_\_\_\_  
Required Payment Amount: \_\_\_\_\_  
Required Payment Date: \_\_\_\_\_

Under the terms of the Mutual Settlement Agreement, the Amerindo Parties will be in Default if this failure of payment is not remedied within 10 days of the date of this letter.

Sincerely,

\_\_\_\_\_  
On behalf of the Tara Glynn Colburn Trust

FILED  
9/22/04  
COUNTY CLERK  
NEW YORK COUNTY  
AS AN EXHIBIT

DATE 7/1/08  
I hereby certify that the foregoing  
paper is a true copy of the original  
thereof filed in my office on the  
day of 9/22/04  
*[Signature]*  
AS AN EXHIBIT  
County clerk and clerk of the  
Supreme Court of New York County  
NO FEE - OFFICIAL USE

Mutual Settlement Agreement  
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**EXHIBIT 2**

Mutual Settlement Agreement  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

NICHOLAS G. CIRIELLO, as Trustee of The:  
Tara Glynn Colburn Trust,

Plaintiff,

-against-

AMERINDO INVESTMENT  
ADVISORS INC.,

Defendant.

Index No. 604021/03

Affidavit of Confession  
of Judgment by Defendant  
Amerindo Investment Advisors Inc.

STATE OF NEW YORK )  
- ) ss.  
COUNTY OF NEW YORK )

ALBERTO VILAR, being duly sworn, deposes and says as follows:

1. I am an officer of the defendant in this action, Amerindo Investment Advisors Inc. ("Amerindo-California"), a corporation organized and existing under the laws of the State of California, with its principal place of business located in New York, New York. I am fully authorized by Amerindo-California to make this Confession of Judgment on its behalf. I hereby confess judgment herein and authorize entry of judgment against Amerindo-California, and in favor of Nicholas G. Ciriello ("Ciriello"), as Trustee of the Tara Glynn Colburn Trust (the "Trust"), in the State of New York, County of New York in the sum of \$1,486,371.78, due and payable as follows:

a. \$100,000 shall be wired, no later than September 24, 2004, as follows:

MELLON BANK  
PITTSBURGH, PA  
ABA# 0430-0026-1

CREDIT MERRILL LYNCH  
A/C# 101-1730  
FOR FURTHER CREDIT TO:  
A/C# 230-04010 -- THE TARA COLBURN FUND

Mutual Settlement Agreement  
Page 9 of 14

b. \$450,000.00, over and above the previously-mentioned \$100,000, shall be wired to the same account no later than December 31, 2004.

c. \$936,371.78, over and above the previously-mentioned \$100,000 and \$450,000, shall be wired to the same account no later than August 15, 2005.

2. This Confession of Judgment is for a debt justly due or to become due to the Trust, arising out of the following facts:

a. Ciriello commenced an action on December 23, 2003 against Amerindo-California in the Supreme Court of the State of New York, County of New York, entitled "Nicholas G. Ciriello, as Trustee of The Tara Glynn Colburn Trust, Plaintiff, against Amerindo Investment Advisors Inc., Defendant," bearing Index No. 604021/03 (the "Action") wherein he claimed that Amerindo-California owed a debt to the Trust as of February 10, 2003 in the amount of \$1,271,240.25 (the "Debt").

b. Ciriello indicated an intention to bring an action against Amerindo Investment Advisors, Inc. ("Amerindo-Panama") (with Amerindo-California, the "Amerindo Parties") to collect the Debt.

c. On September 13, 2004, before this Confession of Judgment was executed, in order to avoid the expense and inconvenience of litigation and to settle the claim in the Action, as well as all other potential claims arising out of the same nucleus of facts, including but not limited to the claim Ciriello indicated an intent to bring against Amerindo-Panama, the Amerindo Parties and Ciriello (collectively, the "Settling Parties"), entered into a Mutual Settlement Agreement (the "Settlement Agreement"), which is attached hereto as Exhibit 1.

d. Pursuant to the Settlement Agreement, Amerindo-California is, with Amerindo-Panama, jointly and severally liable to the Trust in the amount of 1,486,371.78,



Mutual Settlement Agreement  
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payable to the Trust according to the terms set forth in the Settlement Agreement. This amount, as described in the Settlement Agreement, represents the compromised amount of the Debt together with interest that had accumulated to the date of the Settlement Agreement and that would continue to accumulate until the Debt was fully satisfied.

c. Amerindo-California is a corporation organized and existing under the laws of California, with active status as a registered foreign business corporation in New York, with its Principal Executive Office located at 399 Park Avenue, Suite 1800, New York, New York.

3. Amerindo-California admits and hereby submits to the jurisdiction of this Court over this matter and over Amerindo-California personally.

4. This Confession of Judgment is not for the purpose of securing the Trust against a contingent liability, and is not an installment loan within the prohibition of CPLR 3201.

STATE OF New York  
COUNTY OF New York  
DATE September 13, 2004

Alberto W. Vilar  
Alberto W. Vilar  
As an officer of and on behalf of  
Amerindo Investment Advisors Inc.

Sworn to before me this 13th  
day of September 2004.

Dana E. Smith  
Notary Public

DANA E. SMITH  
Notary Public, State of New York  
No. 31-4838950  
Qualified in New York County  
Commission Expires April 11, 2006

June 27, 2006

FILED  
9/22/04  
COUNTY CLERK  
NEW YORK COUNTY  
AS AN EXHIBIT

DATE 7/1/08  
I hereby certify that the foregoing  
paper is a true copy of the original  
thereof filed in my office on the  
day of 9/22/04.

Thomas P. Sullivan  
AS AN EXHIBIT  
County clerk and clerk of the  
Supreme Court of New York County  
NOT FOR OFFICIAL USE

Mutual Settlement Agreement  
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**EXHIBIT 3**

Mutual Settlement Agreement  
Page 12 of 14

STATE OF NEW YORK     )  
                                   ) ss.:  
COUNTY OF NEW YORK    )

**AFFIDAVIT OF CONFESSION OF JUDGMENT**  
**BY AMERINDO INVESTMENT ADVISORS, INC.**

ALBERTO VILAR, being duly sworn, deposes and says as follows:

1. I am an officer of Amerindo Investment Advisors, Inc. ("Amerindo-Panama"), a corporation organized and existing under the laws of Panama, with its principal place of business in Panama. I am fully authorized by Amerindo-Panama to make this Confession of Judgment on its behalf. I hereby confess judgment and authorize entry of judgment against Amerindo-Panama, and in favor of Nicholas G. Ciriello ("Ciriello"), as Trustee of The Tara Glynn Colburn Trust (the "Trust"), in the State of New York, County of New York in the sum of \$1,486,371.78, due and payable as follows:

a. \$100,000 shall be wired, no later than September 24, 2004, as follows:

MELLON BANK  
PITTSBURGH, PA  
ABA# 0430-0026-1

CREDIT MERRILL LYNCH  
A/C# 101-1730  
FOR FURTHER CREDIT TO:  
A/C# 230-04010 -- THE TARA COLBURN FUND

b. \$450,000.00, over and above the previously-mentioned \$100,000, shall be wired to the same account no later than December 31, 2004.

c. \$936,371.78, over and above the previously-mentioned \$100,000 and \$450,000, shall be wired to the same account no later than August 15, 2005.

Mutual Settlement Agreement  
Page 13 of 14

2. This Confession of Judgment is for a debt justly due or to become due to the Trust, arising out of the following facts:

a. Ciriello commenced an action on December 23, 2003 against Amerindo Investment Advisors Inc. ("Amerindo California") (with Amerindo-Panama, the "Amerindo Parties") in the Supreme Court of the State of New York, County of New York, entitled "Nicholas G. Ciriello, as Trustee of The Tara Glynn Colburn Trust, Plaintiff, against Amerindo Investment Advisors Inc., Defendant," bearing Index No. 604021/03 (the "Action") wherein he claimed that Amerindo-California owed a debt to the Trust as of February 10, 2003, in the amount of \$1,271,240.25 (the "Debt"). Amerindo-California asserted that any debt owing to the Trust was owed by Amerindo-Panama.

b. Ciriello indicated an intention to bring an action against Amerindo-Panama to collect the Debt.

c. On September 13, 2004, before this Confession of Judgment was executed, in order to avoid the expense and inconvenience of litigation and to settle the claim in the Action, as well as all other potential claims arising out of the same nucleus of facts, including but not limited to the claim Ciriello indicated an intent to bring against Amerindo-Panama, the Amerindo Parties and Ciriello (collectively, the "Settling Parties"), entered into a Mutual Settlement Agreement (the "Settlement Agreement"), which is attached hereto as Exhibit 1.

d. Pursuant to the Settlement Agreement, Amerindo-Panama is, with Amerindo-California, jointly and severally liable to the Trust in the amount of \$1,486,371.78, payable to the Trust according to the terms set forth in the Settlement Agreement. This amount, as described in the Settlement Agreement, represents the compromised amount of the Debt



Mutual Settlement Agreement  
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together with interest that had accumulated to the date of the Settlement Agreement and that would continue to accumulate until the Debt was fully satisfied.

3. Amerindo-Panama hereby admits and submits to the jurisdiction of the Courts of the State of New York over this matter and over Amerindo-Panama personally with respect to the entry and enforcement of the judgment and debt acknowledged hereby.

4. This Confession of Judgment is not for the purpose of securing the Trust against a contingent liability, and is not an installment loan within the prohibition of CPLR 3201.

STATE OF New York  
COUNTY OF New York  
DATE September 13, 2004

Alberto W. Vilar  
Alberto W. Vilar  
As an officer of and on behalf of  
Amerindo Investment Advisors Inc.

Sworn to before me this 13th  
day of September 2004.

Dana E. Smith  
Notary Public

DANA E. SMITH  
Notary Public, State of New York  
No. 31-4838950  
Qualified in New York County  
Commission Expires April 11, 2006

June 27, 2006

FILED  
9/22/04  
COUNTY CLERK  
NEW YORK COUNTY  
AS AN EXHIBIT

DATE 7/1/08  
I hereby certify that the foregoing  
paper is a true copy of the original  
thereof filed in my office on the  
day of 9/22/04

Thomas J. Sullivan

County clerk and clerk of the  
Supreme Court of New York County  
NOTICE - OFFICIAL USE  
AS AN EXHIBIT